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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/582,223

06/08/2006

Edith Trost Sorensen

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7055 7590 10/17/2008
GREENBLUM & BERNSTEIN, P.L.C.
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EXAMINER

WEBB, WALTER E

ART UNIT

PAPER NUMBER

1612

NOTIFICATION DATE

DELIVERY MODE

10/17/2008

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No. 10/582,223	Applicant(s) SORENSEN, EDITH TROST	
	Examiner WALTER E. WEBB	Art Unit 1612	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 June 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 and 20-31 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16 and 20-31 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>6/25/2008, 10/26/2006</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Applicants' arguments, filed 6/25/2008, have been fully considered. Rejections and/or objections not reiterated from previous office actions are hereby withdrawn. The following rejections and/or objections are either reiterated or newly applied. They constitute the complete set presently being applied to the instant application.

Claim Rejections - 35 USC § 103

Claims 1-11, 13-16 and 20-31 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Rajaiah et al.

Applicant argues that the rejections over Rajaiah have no sufficient basis because the rejections do not indicate how Rajaiah is being modified. However, Rajaiah teach a composition comprising the applicant's claimed limitations. The artisan would have chosen the components of Rajaiah to produce a chewing gum or confection that inhibits buildup of plaque and other debris on teeth, as well as inhibit gingivitis. Rajaiah provides a parameter for the components to assist the artisan in making the chewing gum or confection. For example, the composition may comprise calcium pyrophosphate in an amount generally from 1% to about 70% by weight of the chewing gum or confection component. (See paragraph [0059].) Providing calcium pyrophosphate at 1%, for example, meets the limitation for the amount of this component as per claim 1 (between 0.5% and 9%).

Applicant argues that polybutene is not a "solid component" and that this component would be essentially destroyed to arrive at the claimed subject matter.

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However, Applicant's invention is not drawn to a method of making a chewing gum or confectionary, but a product comprising more than 75% by weight of solid materials.

The product of Rajaiah is solid insofar as it is in the form of a chewing gum. The product, including the polybutene, therefore comprises solid materials.

Applicant argues that Rajaiah does not disclose a whitening effect of the abrasive and does not contain any teaching or suggestion as to the particular selection of calcium pyrophosphate among several other abrasives for any purpose. The artisan would have chosen calcium pyrophosphate based on its unambiguous disclosure in Rajaiah. Since Rajaiah teach a concentration for calcium pyrophosphate at 1%, the chewing gum of Rajaiah would be expected to inherently possess the same chemical and physical properties, such as tooth whitening.

Applicant argues superior whitening purposes of calcium pyrophosphate as compared to the commonly used calcium carbonate. However, calcium pyrophosphate is commonly used in prior art dentifrices. (See for example, US Patent No. 2,876,167, US Patent No. 6,331,291, US Patent No. 6,174,516, and US Patent No. 5,851,514.) In fact the stain removal or "whitening" ability calcium pyrophosphate is used as a standard by which dentifrices are measured for their stain removal or whitening capability. For example, Thomas et al., (US 6,294,155) states that calcium pyrophosphate is a reference material of the American Dental Association and that the stain reduction resulting from calcium pyrophosphate use is taken to be by definition 100 (see col. 6, lines 32-51.) Because calcium pyrophosphate is commonly used and unambiguously disclosed in Rajaiah the artisan would have chosen it to be used in the

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composition of Rajaiah. Because the artisan would not have necessarily preferred calcium carbonate over calcium pyrophosphate, Applicant's data is not persuasive. Furthermore, the artisan would expect some differences between calcium carbonate and calcium pyrophosphate since they are different compounds.

2) Claim 12 remains rejected under 35 U.S.C. 103(a) as being unpatentable over Rajaiah et al. in view of Gibbs et al.

Applicant argues that this rejection should be withdrawn for the reasons above. However, this rejection is maintained for the Examiner's reasons given above.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Walter E. Webb whose telephone number is (571) 270-3287. The examiner can normally be reached on 8:00am-4:00pm Mon-Fri EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Frederick F. Krass can be reached (571) 272-0580. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Walter E. Webb
/Walter E Webb/
Examiner, Art Unit 1612

/Frederick Krass/

Supervisory Patent Examiner, Art Unit 1612